

EUROPEAN COMMUNITIES (ACCESS TO INFORMATION ON THE ENVIRONMENT) REGULATIONS 2007
to 2011¹

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SCHEDULE Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

¹ Unofficial consolidated version of S.I. No. 133 of 2007 as amended by S.I. No. 662 of 2011. Users should refer to authoritative versions of the legislation.

EUROPEAN COMMUNITIES (ACCESS TO INFORMATION ON THE ENVIRONMENT) REGULATIONS 2007

I, DICK ROCHE, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Access to Information on the Environment) Regulations 2007.

(2) These Regulations shall come into operation on 1 May 2007.

Transitional provision and revocation

2. (1) A request for information made under the Regulations of 1998 and not determined by the public authority concerned prior to the commencement of these Regulations shall continue to be dealt with and determined by that authority under the Regulations of 1998.

(2) The Regulations of 1998 are revoked.

(3) In this article “Regulations of 1998” means the European Communities Act 1972 (Access to Information on the Environment) Regulations 1998 (S.I. No. 125 of 1998).

Interpretation

3. (1) In these Regulations—

“applicant” means any natural or legal person requesting environmental information pursuant to these Regulations;

“Commissioner” means the holder of the office of Commissioner for Environmental Information established under article 12;

“Directive” means Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003¹, which, for convenience of reference, is set out in the Schedule;

“environmental information” means any information in written, visual, aural, electronic or any other material form on—

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,

(d) reports on the implementation of environmental legislation,

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

“environmental information held by a public authority” means environmental information in the possession of a public authority that has been produced or received by that authority;

“environmental information held for a public authority” means environmental information that is physically held by a natural or legal person on behalf of that authority;

“Minister” means the Minister for the Environment, Heritage and Local Government;

“public authority” means, subject to sub-article (2)—

(a) government or other public administration, including public advisory bodies, at national, regional or local level,

(b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment, and

(c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b),

and includes—

(i) a Minister of the Government,

(ii) the Commissioners of Public Works in Ireland,

(iii) a local authority for the purposes of the Local Government Act 2001 (No. 37 of 2001),

(iv) a harbour authority within the meaning of the Harbours Act 1946 (No. 9 of 1946),

(v) the Health Service Executive established under the Health Act 2004 (No. 42 of 2004),

(vi) a board or other body (but not including a company under the Companies Acts) established by or under statute,

(vii) a company under the Companies Acts, in which all the shares are held—

(I) by or on behalf of a Minister of the Government,

(II) by directors appointed by a Minister of the Government,

(III) by a board or other body within the meaning of paragraph (vi), or

(IV) by a company to which subparagraph (I) or (II) applies, having public administrative functions and responsibilities, and possessing environmental information;

“request” means a request for environmental information pursuant to article 6.

(2) Notwithstanding anything in sub-article (1), “public authority” does not include any body when acting in a judicial or legislative capacity.

(3) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations that it has in the Directive.

Scope

4. (1) These Regulations apply to environmental information other than, subject to sub-article (2), information that, under any statutory provision apart from these Regulations, is required to be made available to the public, whether for inspection or otherwise.

(2) Notwithstanding—

(a) section 38 of the Planning and Development Act 2000 (No. 30 of 2000) and any regulations made thereunder,

(b) sections 10 and 31 of the Air Pollution Act 1987 (No. 6 of 1987) and any regulations made thereunder, and

(c) sections 6 and 89 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) (as amended by the Protection of the Environment Act 2003 (No. 27 of 2003)) and any regulations made thereunder, environmental information held by, or on behalf of, a public authority shall be made available in accordance with these Regulations.

General duties of public authority

5. ~~(1)~~ (1) A public authority shall—

(a) inform the public of their rights under these Regulations and ~~the Directive and~~ provide information and guidance on ~~these~~ exercise of those rights, ~~and~~

(b) make all reasonable efforts to maintain environmental information held by or for it in a ~~form or~~ manner that is readily reproducible and accessible by information technology or by other electronic means; ~~z~~

(c) ensure that environmental information compiled by or for it, is up-to-date, accurate and comparable,

(d) maintain registers or lists of the environmental information held by the authority and designate an information officer for such purposes or provide an information point to give clear indications of where such information can be found.

(2) The environmental information specified in sub-article 5(1)(b) shall include at least:

(a) the texts of international treaties, conventions or agreements and legislation pertaining to them,

(b) policies, plans and programmes,

(c) progress reports on the implementation of items specified in sub-articles (a) and (b), where these have been prepared by the public authority or are held in electronic form by them, and

(d) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment,

where such information is directly relevant to the function of that public authority and is environmental information within the meaning of article 3.

(3) In the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, a public authority shall ensure that all information held by or for it, which could enable the public likely to be affected to take measures to prevent or mitigate harm, is disseminated immediately and without delay.

(4) Exceptions in articles 7, 8 and 9 may apply in relation to the duties imposed by this article.

(5) Public authorities may satisfy the requirements of this article by creating links to internet sites where the information may be found.

Request for environmental information

6. (1) A request for environmental information shall—

(a) be made in writing or electronic form,

(b) state that the request is made under these Regulations,

(c) state the name, address and any other relevant contact details of the applicant,

(d) state, in terms that are as specific as possible, the environmental information that is the subject of the request, and

(e) if the applicant desires access to environmental information in a particular form or manner, specify the form or manner of access desired.

(2) An applicant shall not be required to state his or her interest in making the request.

Action on request

7. (1) A public authority shall, notwithstanding any other statutory provision and subject only to these Regulations, make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority.

(2) (a) A public authority shall make a decision on a request and, where appropriate, make the information available to the applicant as soon as possible and, at the latest, but subject to paragraph (b) and sub-article (10), not later than one month from the date on which such request is received by the public authority concerned.

(b) Where a public authority is unable, because of the volume or complexity of the environmental information requested, to make a decision within one month from the date on which such request is received, it shall, as soon as possible and at the latest, before the expiry of that month—

(i) give notice in writing to the applicant of the reasons why it is not possible to do so, and

(ii) specify the date, not later than 2 months from the date on which the request was received, by which the response shall be made,

and make a decision on the request and, where appropriate, make the information available to the applicant by the specified date.

(3) (a) Where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless—

(i) the information is already available to the public in another form or manner that is easily accessible, or

(ii) access in another form or manner would be reasonable.

(b) Where a public authority decides to make available environmental information other than in the form or manner specified in the request, the reason therefor shall be given by the public authority in writing.

(4) Where a decision is made to refuse, in whole or in part, a request for environmental information, the public authority concerned shall—

(a) subject to paragraph (b), notify the applicant of the decision not later than one month following receipt of the request,

(b) in a case to which sub-article (2)(b) applies, notify the applicant as soon as possible but not later than 2 months following receipt of the request,

(c) specify the reasons for the refusal,

(d) inform the applicant of his or her rights of internal review and appeal in accordance with these Regulations, including the time within which such rights may be exercised.

(5) Where a request is made to a public authority and the information requested is not held by or for the authority concerned, that authority shall inform the applicant as soon as possible that the information is not held by or for it.

(6) Where sub-article (5) applies and the public authority concerned is aware that the information requested is held by another public authority, it shall as soon as possible—

(a) transfer the request to the other public authority and inform the applicant accordingly, or

(b) inform the applicant of the public authority to whom it believes the request should be directed.

(7) Where a request is made to a public authority which could reasonably be regarded as a request for environmental information but which is not a request that has been made in accordance with—

(a) article 6(1), or

(b) the Freedom of Information Acts 1997 and 2003, the public authority concerned shall inform the applicant of his or her right of access to environmental information and the procedure by which that right can be exercised, and shall offer assistance to the applicant in this regard.

(8) Where a request is made by the applicant in too general a manner, the public authority shall, as soon as possible and at the latest within one month of receipt of the request, invite the applicant to make a more specific request and offer assistance to the applicant in the preparation of such a request.

(9) Where, in a request for information on factors affecting or likely to affect the environment, the applicant specifies that he or she requires information on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling that information, the public authority shall, as Article 8(2) of the Directive requires, either make the information available to the applicant or refer the applicant to the standardised procedures.

(10) A public authority shall, in the performance of its functions under this article, have regard to any timescale specified by the applicant.

(11) Where a request is made for information which has been provided to the public authority on a voluntary basis by a third party and, in the opinion of the public authority, release of the information may adversely affect the third party, the public authority shall take all reasonable efforts to contact the third party concerned to seek consent or otherwise to release the information, pursuant to article 8(a)(ii) and article 10

Grounds that, subject to article 10, mandate a refusal

8. A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information—

(a) would adversely affect—

- (i) the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law,
- (ii) the interests of any person who, voluntarily and without being under, or capable of being put under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information,
- (iii) the protection of the environment to which that information relates, or
- (iv) without prejudice to paragraph (b), the confidentiality of the proceedings of public authorities, where such confidentiality is otherwise protected by law (including the Freedom of Information Acts 1997 and 2003 with respect to exempt records within the meaning of those Acts);

or

(b) to the extent that it would involve the disclosure of discussions at one or more meetings of the Government, is prohibited by Article 28 of the Constitution.

Discretionary grounds for refusal of information

9. (1) A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect—

- (a) international relations, national defence or public security,
- (b) the course of justice (including criminal inquiries and disciplinary inquiries),
- (c) commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest, or
- (d) intellectual property rights.

(2) A public authority may refuse to make environmental information available where the request—

- (a) is manifestly unreasonable having regard to the volume or range of information sought,
- (b) remains formulated in too general a manner, taking into account article 7(8),
- (c) concerns material in the course of completion, or unfinished documents or data, or
- (d) concerns internal communications of public authorities, taking into account the public interest served by the disclosure.

Incidental provisions relating to refusal of information

10. (1) Notwithstanding articles 8 and 9 (1)(c), a request for environmental information shall not be refused where the request relates to information on emissions into the environment.

(2) The reference in sub-article (1) to information on emissions into the environment does not include a reference to any discussions on the matter of such emissions at any meeting of the Government.

(3) The public authority shall consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal.

(4) The grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis having regard to the public interest served by disclosure.

(5) Nothing in article 8 or 9 shall authorise a public authority not to make available environmental information which, although held with information to which article 8 or 9 relates, may be separated from such information.

(6) Where a request is refused pursuant to article 9(2)(c) because it concerns material in the course of completion, the public authority shall inform the applicant of the name of the authority preparing the material and the estimated time needed for completion.

(7) Where a decision is not notified to the applicant within the relevant period specified in article 7, a decision refusing the request shall be deemed to have been made by the public authority concerned on the date of expiry of such period.

Internal review of refusal

11. (1) Where the applicant's request has been refused under article 7, in whole or in part, the applicant may, not later than one month following receipt of the decision of the public authority concerned, request the public authority to review the decision, in whole or in part.

(2) Following receipt of a request for a review under sub-article (1), the public authority concerned shall designate a person unconnected with the original decision whose rank is the same as, or higher than, that of the original decision-maker to review the decision and that person shall—

(a) affirm, vary or annul the decision, and

(b) where appropriate, require the public authority to make available environmental information to the applicant,

in accordance with these Regulations.

(3) A decision under sub-article (2) shall be notified to the applicant within one month from receipt of the request for the internal review.

(4) Where the decision under sub-article (2) affirms a decision under article 7, or varies it in a way that results in the request being refused in whole or in part, the public authority concerned shall—

(a) specify the reasons for the decision under sub-article (2), and

(b) inform the applicant of his or her right of appeal in accordance with these Regulations, including the time within which such right may be exercised.

(5) In sub-article (1) and article 12(3)(a), the reference to a request refused in whole or in part includes a request that—

(a) has been refused on the ground that the body or person concerned contends that the body or person is not a public authority within the meaning of these Regulations,

(b) has been inadequately answered, or

(c) has otherwise not been dealt with in accordance with Article 3, 4 or 5 of the Directive (including the ground that the amount of the fee charged under article 15(1) is excessive).

Appeal to Commissioner for Environmental Information

12. (1) There is established the office of Commissioner for Environmental Information and the holder of the office shall be known as the Commissioner for Environmental Information and shall be independent in the performance of his or her functions.

(2) The holder of the office of Commissioner for Environmental Information shall be the person who, for the time being, holds the office of Information Commissioner under the Freedom of Information Acts 1997 and 2003.

(3) Where—

(a) a decision of a public authority has been affirmed, in whole or in part, under article 11, or

(b) a person other than the applicant, including a third party, would be ~~affected~~incriminated by the disclosure of the environmental information concerned,

the applicant, the person other than the applicant or ~~other person affected~~the third party may appeal to the Commissioner against the decision of the public authority concerned.

(4) (a) An appeal under this article shall be initiated—

(i) not later than one month after receipt of the decision under article 11(3), or

(ii) where no decision is notified by a public authority, not later than one month from the time when a decision was required to be notified under article 11(3).

(b) Where the Commissioner is satisfied, in the circumstances of a particular case, that it is reasonable to do so, he or she may extend the time for initiating an appeal under this sub-article.

(5) Following receipt of an appeal under this article, the Commissioner shall—

(a) review the decision of the public authority,

(b) affirm, vary or annul the decision concerned, specifying the reasons for his or her decision, and

(c) where appropriate, require the public authority to make available environmental information to the applicant,

in accordance with these Regulations.

(6) The Commissioner may, for the purposes of this article, do any of the following:

(a) require a public authority to make available environmental information to the Commissioner and, where appropriate—

(i) require the public authority concerned to attend before the Commissioner for that purpose, and

(ii) where the public authority is a body corporate, require its chief officer to attend,

(b) examine and take copies of any environmental information held by a public authority and retain it in his or her possession for a reasonable period,

(c) enter any premises occupied by a public authority and there require to be furnished with such environmental information as he or she may reasonably require, or take such copies of, or extracts from, any environmental information found or made available on the premises.

(7) A public authority shall comply with a decision of the Commissioner under sub-article (5) within 3 weeks after its receipt.

(8) Where a public authority fails to comply with a decision of the Commissioner within the period specified in sub-article (7), the Commissioner may apply to the High Court for an order directing the public authority to comply with that decision and, on the hearing of such an application, the High Court may grant such relief accordingly.

(9) (a) The Commissioner may refer any question of law arising in an appeal under this article to the High Court for determination and shall postpone the making of a decision until after the determination of the court proceedings.

(b) The High Court or, on appeal from that Court, the Supreme Court, may order that some or all of the costs of an applicant or other person affected in relation to a reference under this sub-article be paid by the public authority concerned.

(10) The Commissioner shall be assisted by the staff of the office of the Information Commissioner and by such other resources as may, from time to time, be available to that office.

Appeal to High Court on point of law

13. (1) A party to an appeal under article 12 or any other person affected by the decision of the Commissioner may appeal to the High Court on a point of law from the decision.

(2) An appeal under sub-article (1) shall be initiated not later than 2 months after notice of the decision under article 12(5) was given to the party to the appeal or other person affected.

(3) Where an appeal under this article by an applicant or other person affected is dismissed by the High Court or, on appeal from that Court, the Supreme Court, the Court may order that some or all of the costs in relation to the appeal of any person affected be paid by the public authority concerned, if it considers that the point of law concerned was of exceptional public importance, and but for this sub-article, would not so order.

(4) In an appeal under this article to the High Court or, on appeal from that Court, the Supreme Court, the Court shall, where appropriate, specify the period within which effect shall be given to its order.

Guidelines

14. (1) The Minister may publish guidelines in relation to the implementation of these Regulations by public authorities.

(2) A public authority shall, in the performance of its functions under these Regulations, have regard to any guidelines published by the Minister under sub-article (1).

(3) In addition to the guidelines referred to in sub-article (1), the Minister shall ensure that an indicative list of public authorities is publicly available in electronic format.

Fees

~~15-(1)(a)~~ A public authority may charge a fee when it makes available environmental information in accordance with these Regulations (including when it makes such information available following an appeal to the Commissioner under article 12), provided that such fee shall be reasonable having regard to the Directive.

(b) Notwithstanding sub-article (a), a public authority shall not charge a fee for access to any public registers or lists of environmental information pursuant to article 5(1)(d).

(c) Notwithstanding sub-article (a), a public authority shall not charge a fee for the examination in situ of information requested.

(d) Where an applicant examines information in situ and wishes to obtain copies of that information, a public authority may charge a fee, consistent with the list of fees specified under article 15(2), for the provision of such copies.

(2) Where a public authority charges a fee pursuant to sub-article (1), it shall make available to the public a list of fees charged, information on how ~~they~~such fees are calculated and the circumstances under which they may be waived.

(3) Subject to sub-article (4), a fee of €150 shall be charged for making an appeal to the Commissioner under article 12.

(4) In respect of an appeal pursuant to article 12 by—

(a) a holder of a medical card,

(b) a dependant of a holder of a medical card, or

(c) a person referred to in article 12(3)(b),

the fee charged shall be €50.

(5) The Commissioner may deem an appeal to be withdrawn if the public authority makes the requested information available, in whole or in part, prior to a formal decision of the Commissioner under article 12(5). In such circumstances, the Commissioner may waive or refund all or part of the appeal fee.

(6) In respect of an appeal pursuant to article 12 on a decision pursuant to article 10(7), the Commissioner may waive all or part of the appeal fee.

(7) Where an appeal pursuant to article 12 is withdrawn by an appellant, the Commissioner may waive all or part of the appeal fee